JD–72–96
Huntington, WV

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

VOCA CORPORATION AND ITS WHOLLY-OWNED SUBSIDIARY VOCA CORPORATION OF WEST VIRGINIA, INC.

and Case 9–CA–32133-2

DISTRICT 1199, THE HEALTH CARE AND SOCIAL SERVICE UNION, SEIU, AFL-CIO

and

VOCA CORPORATION AND ITS WHOLLY-OWNED SUBSIDIARIES, VOCA CORPORATION OF OHIO, INC., VOCA CORPORATION OF WASHINGTON, D.C. AND VOCA CORPORATION OF WEST VIRGINIA, INC.

and Case 9–CA–32278

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Engrid Emerson Vaughan, Esq., of Cincinnati, OH,
for the General Counsel.
Thomas J. Wiencek, Esq., of Cleveland, OH, and
Paul L. Bittner, Esq., of Dublin, OH, for VOCA Corporation.
Michael J. Hunter, Esq., of Columbus, OH, for the Union.

DECISION

Statement of Case

JUDITH A. DOWD, Administrative Law Judge. In Case No. 9-CA-32133-2, District 1199, the Health Care and Social Service Union, SEIU, AFL-CIO ("District 1199"), filed charges and amended charges alleging that VOCA Corporation and its wholly owned subsidiary, VOCA Corporation of West Virginia, Inc. ("VOCA and VOCA West Virginia") had engaged in certain unfair labor practices which violated Sections 8(a)(1), (3), and (5) of the National Labor Relations Act ("the Act"). In Case No. 9-CA-32278, Service Employees International Union AFL-CIO ("SEIU") filed charges and amended charges alleging that VOCA Corporation and its wholly owned subsidiaries, VOCA Corporation of Ohio, VOCA Corporation of Washington, D.C., and VOCA Corporation of West Virginia ("VOCA and its subsidiaries") violated Section 8(a)(3) and (5) of the Act. On November 30, 1994, the Board's Regional Office for Region 9 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing ("complaint") alleging that VOCA and its subsidiaries violated Section 8(a)(1) of the Act by maintaining a bonus plan which excluded all union-represented employees from participation and Sections

8(a)(1) and (3) of the Act by, on or about August 1994, failing to distribute bonus checks to employees who were represented by SEIU affiliates, in order to discourage employees from engaging in union activities. The complaint further alleged that VOCA and VOCA West Virginia violated Section 8(a)(1) of the Act by impliedly promising, in June or July 1994, that employees would receive increased benefits if District 1199 lost a decertification election and Sections 8(a)(1) and (5) of the Act by failing and refusing since August 9, 1994, to provide information to, and bargain with, District 1199 concerning the VIP bonus program.

This case was tried at Huntington, West Virginia, on May 23, 24, and 25, 1995. At the hearing, all parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. During the course of the hearing, the General Counsel amended the complaint to add an allegation that VOCA violated Section 8(a)(1) of the Act by announcing a discriminatory reduction in benefits for union-represented employees. Following the close of the hearing, VOCA Corporation and the General Counsel filed briefs. Counsel for District 1199 adopted the brief for the General Counsel. Upon consideration of the entire record including my observation of the witnesses and their demeanor, as well as the briefs filed by the parties, I make the following findings.

I. JURISDICTION

The complaint alleges, the answer admits, and I find that VOCA and its subsidiaries, at all material times herein, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that at all material times herein, SEIU and District 1199 have been labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The 1993 and 1994 VIP Program Statement

VOCA and its subsidiaries are engaged in providing residential services to individuals who are mentally retarded or suffer from developmental disabilities. VOCA employs approximately 2700 employees in Ohio, West Virginia, North Carolina, Maryland and Washington, D.C. SEIU affiliates represent VOCA employees in bargaining units throughout those locales.

In 1992, VOCA adopted a corporate-wide bonus program called the VOCA Incentive Plan ("VIP"). Under the plan, eligible employees could earn two types of bonuses--a bonus of 2.5% of their base pay if their individual group home attained 95% to 100% of its annual profit target (unit bonus) and another 2.5% if all VOCA group homes reached 95% to 100% of their profit targets (company bonus). After the VIP was instituted, VOCA annually distributed to all of its subsidiaries a publication explaining the VIP program. In 1993 and 1994, the VIP program statement contained the following rules governing employee eligibility for participation in the bonus program:

You are eligible for a bonus if:

. You are a full-time employee on the first business day of the Plan Year....
. You are not a member of a collective bargaining unit.

It is well settled that an employer violates Section 8(a)(1) of the Act through a provision in, or a statement about, a plan which suggests that employees who choose union representation will automatically be excluded from participation or that continued coverage under the plan will not be subject to bargaining. See, Hertz Corp., 316 NLRB 672 (1995); Phelps Dodge Mining Co., 308 NLRB 985, 995 (1992); Niagara Wires, 240 NLRB 1326 (1979). As the Board has stated: "What is unlawful is the suggestion inherent in the exclusionary language that unrepresented employees will forfeit the plan's benefits if they choose union representation." Handleman Co., 283 NLRB 451, 452 (1987).

In this case, VOCA and its subsidiaries informed employees that they were automatically ineligible for VIP bonuses if they chose to be represented by a union in a collective bargaining unit. After reading the plan statement, employees would tend to be discouraged from exercising their right to engage in union activities, since, according to the plan statement, membership in a union meant automatic disqualification from receiving a bonus. Furthermore, there is no suggestion in the VOCA program statement that union-represented employees could become eligible to receive VIP bonuses if their bargaining representative negotiated this benefit for them. The Board has held that exclusionary language similar to that used by VOCA in its 1993 and 1994 VIP program statement violates Section 8(a)(1) of the Act.[1] Hertz Corp., 316 NLRB 1326 (1995); Dura Corp., 156 NLRB 285 (1965), enfd. 311 F. 2d 219 (2d Cir. 1962), cert. denied, 372 U.S. 977 (1963).

B. The Alleged Implied Promise of Benefits

All VOCA West Virginia bargaining units, including the Huntington Group Homes unit, ("Huntington unit") were represented by District 1199, under a single collective bargaining agreement effective from September 1, 1993, to August 31, 1996. On October 25, 1993, VOCA employees in the Huntington unit voted to decertify District 1199 and the Union filed objections to the conduct of the election. About July 1994, while union objections to the conduct of the decertification election were still pending before the National Labor Relations Board ("the Board"), the chairman of the board of VOCA Corporation, Vincent Petenelli, held a meeting of all of the Huntington employees. He discussed, among other topics, the VIP bonus program. At the end of the meeting, employee Rosie Smith asked Mary Bea Eaton, VOCA's director of operations for West Virginia, whether it was true that the VIP bonus was only for non-bargaining unit employees. Eaton replied that as soon as the decertification election results were final, the employees would get VIP checks and that she would personally place Smith's bonus check in her hands.

In evaluating employer conduct which allegedly violates Section 8(a)(1) of the Act, the test is "whether the employer engaged in conduct which reasonably tends to interfere with, restrain, or coerce employees in the free exercise of rights under the Act." NLRB v. Almet, Inc., 987 F. 2d 445 (7th Cir. 1993); Reeves Bros., Inc., 320 NLRB No. 133 (1996). It is well-settled that an employer violates Section 8(a)(1) of the Act by impliedly promising employees additional pay or other improved benefits if they reject union representation. P.A. Incorporated, 248 NLRB 491 (1980); Grimes Mfg., 250 NLRB 254 (1980).

[1] It should be noted that in 1995, VOCA changed its VIP eligibility statement to read: "You are eligible for a VIP payment...if...You are not a member of a collective bargaining unit (unless the terms of the VIP have been negotiated into your collective bargaining agreement)".

Here, Eaton held out the promise that employees would receive VIP bonuses if they continued to reject representation by District 1199. Although the employees had already voted to decertify District 1199, union objections to the conduct of the elections were still pending before the Board. At the time Eaton talked to Smith, it was possible that the Board could have overturned the results and ordered a new election. Smith and other similarly situated employees were therefore vulnerable to an implied promise of benefits if they voted against District 1199 in any rerun election. I find that Eaton's statement to employee Smith--that employees would get VIP checks as soon as the decertification results were final--constituted an implied promise of increased benefits if employees continued to reject union representation.[2] I therefore find that VOCA and VOCA West Virginia violated Section 8(a)(1) of the Act by promising employees increased benefits in order to undermine support for the Union.

VOCA contends that it cannot be held liable for unfair labor practices committed by officials of its subsidiary corporations because they are independent corporate entities. VOCA's contention is without merit. Derivative liability may be imposed upon nominally separate businesses which the Board finds are so closely related that they comprise a single integrated enterprise. Iron Workers Local 15, 306 NLRB 309, 310-311 (1992); Emsing's Supermarket, Inc., 284 NLRB 302 (1987). In determining whether two or more companies constitute a single employer, the controlling criteria are (1) common ownership, (2) integration of operations, (3) common management, and (4) centralized control of labor relations. Radio and Television Broadcast Technicians Local 1264 v. Broadcast Service of Mobile, Inc., 380 U.S. 255 (1965). In this case, at least three of the factors indicate that VOCA and its subsidiaries are a single employer. Common ownership is established because VOCA stipulated that all of the VOCA subsidiaries have the same board of directors, the same officers and the same shareholders. There is insufficient evidence to determine whether all of VOCA's operations are integrated. However, common management is established through evidence showing that each of the regional directors of VOCA's subsidiary companies is an employee of VOCA corporation. VOCA's organizational charts also show that the regional operations and facilities are under the VOCA corporate umbrella. Most significantly, there is substantial evidence of centralized control of labor relations. The collective bargaining agreement covering the West Virginia units is between VOCA Corporation and District 1199 and it was signed by Eaton, acting on behalf of VOCA. VOCA benefit programs are typically made available to all employees corporate wide. The evidence with respect to the VIP program also shows that corporate level employees exercise significant control over the way in which the benefits are administered. Throughout his testimony, VOCA's chairman of the board, Vincent Petenelli, referred to the 2,700 employees of VOCA and its subsidiaries as VOCA employees. Vacancies at any of the facilities of VOCA and its subsidiaries are posted for bid and any employee may transfer to a posted job in

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[2] VOCA contends that this same issue of an implied promise of benefits was litigated in the decertification election proceeding and that the finding therein--that Eaton's statement did not constitute a promise of improved benefits but was a factual explanation of non-union employees' wages and benefits--is res adjudicata for purposes of this unfair labor practice proceeding. The record reflects that although an objection concerning alleged promises of benefits by Eaton was litigated in the decertification proceeding, the statements by Eaton in that case are substantially different from the statement Eaton made here. In any event, findings in a representation case concerning even precisely the same conduct that is the basis of an unfair labor practice complaint are not binding in the unfair labor practice proceeding. See, Eidal International Corp., 224 NLRB 911, 912-913 (1976); Viking of Minneapolis, Div. of the Telex Corp., 171 NLRB 1155, 1172-1173 (1968), and cases cited; Wagner Industrial Products Co., 162 NLRB 1349, 1353-57 (1967).

another subsidiary's facility. Under the circumstances of this case, I find that VOCA Corporation and its subsidiaries are a single employer.

C. The Alleged Refusal To Provide Information

On July 8, 1994, VOCA's Mary Bea Eaton wrote to Teresa Ball, area director for District 1199, requesting permission to distribute VIP bonus checks to the Eighth Avenue and Virginia Avenue employees of the Huntington unit. In her reply of July 19, 1994, Ball tentatively agreed to the distribution pending review of information about the VIP. Ball requested "[t]he gross amount of dollars involved," how VOCA determines who is an eligible employee, and why bonus money was only available to Huntington employees.

On August 9, 1994, Eaton replied as follows:

> The VIP program is only available to employees not in the bargaining unit. As you know, it is expensive for a company to be unionized. Cost associated with grievance and arbitration hearings, and travel time ad (sic) up to an additional 25% of cost.
>
> Eligible homes are those that made 95% of their budget. We have very few of these for the 1st half of 1994, however 2 of these homes are in Huntington. We would like to distribute these incentives knowing that we are pending the final decertification decision. This amount is approximately 2% of the individual wage with the other 3% being paid in February of 1995 pending positive budget results....I would like to distribute these bonuses to 8th Avenue and Virginia Ave. group home employees.
>
> Please let me know as soon as possible as these checks are scheduled to be distributed in August.

It is well-settled that an employer has a statutory obligation to provide a union with information that it needs for the proper performance of its duties as collective bargaining representative. NLRB v. Acme Industrial, 385 U.S. 432 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149, 152 (1956). This duty to provide information includes information relevant to contract administration and negotiations. Shoppers Food Warehouse, 315 NLRB 258, 259 (1994). In determining whether an employer is obligated to supply particular information, a broad discovery standard is applied and the only question is whether there is a "probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." NLRB v. Acme Industrial, 385 U.S. at 437 and n.6.

It is uncontested that Eaton provided all of the information requested by District 1199, except for the gross amount of dollars involved. Eaton's letter does not dispute the appropriateness of this request. Information concerning the gross amount of dollars devoted to the VIP program was relevant and necessary for District 1199 to properly perform its collective bargaining duties. The fact that VOCA offered bonuses of up to 5% of base pay to non-represented employees meant that VOCA had financial resources available for employee compensation that were being devoted exclusively to non-represented employee bonuses. District 1199 was entitled to know how much money had been set aside by VOCA for the VIP program, since some of those funds presumably could be used for higher wages for all

bargaining unit employees or to extend the VIP bonus program to union-represented employees. The information requested by District 1199 was relevant to, and necessary for, the proper performance of its bargaining duties and the failure of VOCA West Virginia to provide this information violated Section 8(a)(1) and (5) of the Act.[3]

D. The Alleged Refusal to Bargain

In Ball's July 19th reply to Eaton's proposal to distribute bonus checks, Ball not only requested information about the VIP program, she also added the following. Ball wrote "we (District 1199 and its officials) represent VOCA employees throughout West Virginia and feel that the Bonus should be distributed to all Bargaining Unit VOCA West Virginia employees."[4]

"[W]hile a request to bargain is a prerequisite to the employer's duty to bargain, ... the request need take no special form, so long as there is a clear communication of meaning." Armour & Co., 280 NLRB 824, 828 (1986), quoting from Scobell Chemical Co. v. NLRB, 267 F. 2d 922, 925 (2d Cir. 1959). Whether there has been a clear communication of a request to bargain does not depend entirely upon the words employed by the party making the request. The Board has also examined the factual setting underlying the request. See, Dubuque Packing Co., 303 NLRB 386, 398, and cases cited in n.36, holding that a request for information is tantamount to a request for bargaining.

In effect, Eaton's letter to Ball was a request for a union waiver of the terms of the collective bargaining agreement, so that VOCA could pay certain unit employees VIP bonuses not provided for in the contract. District 1199 responded by requesting more information about the VIP, pointing out that District 1199 represents all West Virginia bargaining unit employees, and taking the position that VIP bonuses should be paid to all represented employees. Under these circumstances, where VOCA created a bargaining situation by requesting a union waiver of the contract terms, and District 1199 responded with a request for information and a counter-proposal, VOCA should have understood that District 1199 was attempting to engage in bargaining. I therefore find that Ball's July 19,1994, letter contained a request for bargaining which VOCA West Virginia failed or refused to honor. This refusal to bargain over the VIP violated Section 8(a)(1) and (5) of the Act.

[3] VOCA's contention in its brief that Eaton provided District 1199 with the gross amount of dollars involved by stating that employees receive 2% of their individual wage and an additional 3% "pending positive budget results" is unmeritorious on its face.

[4] In addition to the Huntington unit, the West Virginia bargaining units consist of the Logan Group Homes; the Princeton Group Homes; the Beckley, Oak Hill, Lewisburg, Summersville Group Homes; and the Greenbrier Center.

E. The Alleged Discriminatory Failure to Distribute VIP Bonus Checks

VOCA did not distribute VIP bonuses to employees in the Eighth Avenue and Virginia Avenue homes as scheduled, in August. On September 30, 1994, the Board affirmed the results of the Huntington decertification election and decertified District 1199. In October 1994, VOCA distributed VIP bonus checks to employees in the Eighth Avenue and Virginia Avenue group homes of the Huntington unit.

Section (a)(3) of the Act makes it an unfair labor practice for an employer, "by discrimination in regard to...any term or condition of employment to encourage or discourage membership in any labor organization." 29 U.S.C. 158 (a)(3). "The policy of the Act is to insulate employees' jobs from their organizational rights." Radio Officers v. NLRB, 347 U.S. 17, 40 (1954). Under Wright Line, 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert. denied, 453 U.S. 989 (1982), approved in NLRB v. Transportation Management Corp., 462 U.S. 393 (1983), the General Counsel must "make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the Employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." Wright Line, at 1089 (footnote omitted). Subsequently, the Board found that it was "unnecessary formally to set forth [the Wright Line] analysis...where an administrative law judge has evaluated the employer's explanation for its action and concluded that the reasons advanced by the employer were pretextual, [which] determination constitutes a finding that the reasons advanced by the employer either did not exist or were not in fact relied upon." Limestone Apparel Corp., 255 NLRB 722,722 (1981).

The General Counsel introduced sufficient evidence in this case to establish a prima facie case that VOCA's actions regarding VIP bonuses for the first half of 1994 were intended to undermine employee support for the Union. Evidence of anti-union animus includes the exclusionary language of the 1993 and 1994 VIP program statement and Eaton's unlawful promise of benefits to employees if they supported decertification of District 1199. Anti-union motivation is also evidenced by Eaton's distribution of a memorandum on November 5, 1993, listing decertification of District 1199 as a long-term corporate goal.[5]

In my view, however, the discrimination took two forms. It originated with VOCA's determination that the Eighth Avenue and Virginia Avenue employees were eligible for VIP bonuses. VOCA's own evidence shows that it had an established policy of excluding from bonus eligibility all union-represented employees who were covered under collective bargaining agreements that did not include the VIP. The Eighth Avenue and Virginia Avenue employees who met their VIP profit targets for the first half of 1994 were represented by District 1199 under a collective bargaining agreement that did not include the VIP. VOCA officials understood that District 1199 still represented the Huntington unit in early 1994 and that the collective bargaining agreement covering unit employees continued in effect. Eaton indicates as much in her July 8, 1994, letter to Ball. VOCA has also never offered any explanation why it deviated from its own rules to declare the Eighth Avenue and Virginia Avenue employees

[5] VOCA argues in its brief that Eaton's memorandum cannot be relied upon as evidence of anti-union motivation, since the corporate goals in the memorandum originated with an employee committee and not with Eaton. Whether or not Eaton originated the idea of making decertification of District 1199 a corporate goal, she endorsed the memorandum containing this anti-union statement by signing the cover letter and distributing the letter and memorandum to her habilitation directors.

eligible for bonuses. I find that VOCA's unexplained change in its VIP eligibility policy amounted to discrimination in favor of employees who voted to decertify District 1199. By doing so, VOCA was able to reward employees for their opposition to the Union and to insure that these employees would vote against District 1199 in any rerun election. I find that VOCA violated Section 8(a)(1) and (3) of the Act by discriminatorily changing its VIP eligibility policy in order to reward employees for opposing unionization. General Clay Products Corp., 306 NLRB 1046 (1992). [6]

I agree with the General Counsel that VOCA also discriminated against the Eighth Avenue and Virginia Avenue employees by delaying distribution of their bonus checks from August to October. VOCA's only explanation for its failure to distribute bonuses in August was that Ball refused to allow them to be distributed. This explanation is clearly pretextual, since Ball's letter specifically states that District 1199 "could see no problem" with the distribution subject to review of the requested information concerning the VIP. Since Eaton failed to provide all of the information requested and failed to enter into bargaining with District 1199, it cannot properly attribute its delay in distributing checks to the Union. In light of VOCA's failure to offer any credible business explanation for its delay in distributing bonus checks, the only remaining explanation is a desire to undermine support for the Union. I infer from the evidence that VOCA delayed distributing the VIP bonus checks from August to a date in October, after District 1199 had been decertified. The delay enabled VOCA to drive home to employees the connection between receiving VIP bonuses and decertification of District 1199. I find that VOCA violated Section 8(a)(1) and (3) of the Act by delaying the distribution of VIP bonus checks until after District 1199 was decertified, in order to undermine employee support for the Union. Cf. Pennsylvania Gas & Water Co., 314 NLRB 791 (1994); Great Atlantic & Pacific Tea Co., 166 NLRB 27, 29 (1967).[7]

F. The Announcement of a Reduction in Benefits

The VOCA Corporation Compensation Committee ("the compensation committee") is composed of employees and managers from different regions of the corporation. The compensation committee makes recommendations to higher management concerning matters involving employee compensation. Vincent Petenelli, the chairman of the board of VOCA Corporation, directed that the minutes of the compensation committee be posted at all VOCA facilities, so that the employees could see them. On January 20 and March 16, 1995, the compensation committee reviewed the established VOCA policy that employees transferring from a nonunion to a union-represented facility are paid a pro rata share of the VIP bonus for the time worked in the non-union facility. The committee recommended that this policy be changed to eliminate prorated bonuses for employees transferring from nonunion to union-

[6] Although this allegation is not included in the complaint, I find that it was fully and fairly litigated during the hearing. Counsel for VOCA questioned Eaton about whether she acted with a discriminatory motive in determining that Eighth Avenue and Virginia Avenue employees were eligible for VIP bonuses, and Eaton denied that she did. I discredit Eaton's testimony in that regard.

[7] The complaint alleges that all of VOCA's subsidiaries discriminatorily failed to distribute VIP bonus checks in August 1994, but the evidence introduced at the hearing related only to Eighth Avenue and Virginia Avenue employees of VOCA West Virginia, who were the only groups of employees that were shown to have met their VIP profit targets. If no other union-represented employees met their profit targets, the issue of discrimination in the distribution of bonus checks does not arise.

represented facilities. This recommendation was incorporated into the minutes of the compensation committee for those dates.

An employer violates Section 8(a)(1) of the Act by telling employees that their benefits will automatically be reduced because they are represented by a union. Ironton Publications, 313 NLRB 1208 (1994). Under the doctrine of apparent authority, an employer may be held responsible for statements which the employees could reasonably believe were authorized by the employer. "The test is whether, under all the circumstances, the employees 'would reasonably believe that ...[the alleged agent] was reflecting company policy and speaking and acting for management." Southern Bag Corp., Ltd., 315 NLRB 725, 725 (1994), quoting from Waterbed World, 286 NLRB 425, 426-427 (1987). See also, Aluf Plastics, 314 NLRB 706, 706 at n.1 (1994).

VOCA contends in its brief that the compensation committee minutes are not attributable to it because these minutes do not constitute official corporate policy. The record does not reflect the ratio of employees to managers on the committee. However, the evidence shows that at least two of the twelve-person committee are managerial employees of VOCA. Amy Schultz-Prather is VOCA's manager of budget and finance and Sandi Kiser-Griffith represented VOCA at union contract negotiations. The presence of Schultz-Prather on the committee is particularly significant because she administers VOCA's VIP plan. Schultz-Prather was VOCA's chief witness at the hearing concerning the operation of the VIP program and her testimony shows that she is extremely knowledgeable on this subject. Under these circumstances employees are likely to give significant weight to the suggestions of the compensation committee and to view the minutes of the committee as authoritative. I therefore find that VOCA violated Section 8(a)(1) of the Act by announcing to employees that union-represented employees would no longer be eligible for prorated bonuses when transferring from a non-union to a union-represented facility.[8]

CONCLUSIONS OF LAW

1. VOCA Corporation and its wholly-owned subsidiaries is an employer engaged in commerce within the meaning of Section 2(2),(6), and (7) of the Act.

2. SEIU and District 1199 are labor organizations within the meaning of Section 2 (5) of the Act.

3. VOCA Corporation and its wholly owned subsidiaries violated Section 8(a)(1) of the Act by maintaining a bonus plan during 1993 and 1994 which excludes all union-represented employees from participation and by announcing a reduction of benefits for union-represented employees.

4. VOCA Corporation and its wholly owned subsidiary, VOCA Corporation of West Virginia, Inc., violated:

[8] VOCA further contends in its brief that it never implemented the suggestion of the compensation committee concerning the elimination of prorated bonuses. Actual implementation of the policy need not be shown. The test is whether the statement reasonably tends to restrain, coerce, or interfere with employees rights under Section 7 of the Act. I find that the recommended change in VIP policy reasonably tends to discourage employees from seeking union representation, since they would therefore be denied a prorated bonus.

(a) Section 8(a)(1) of the Act by impliedly promising an additional benefit to employees if they continued to reject union representation;

(b) Section 8(a)(1) and (5) of the Act by refusing to provide requested bargaining information to District 1199 and by refusing to bargain with it;

(c) Section 8(a)(1) and (3) of the Act by discriminatorily ignoring VOCA's established eligibility policy for VIP bonuses in order to reward employees who opposed union representation and by delaying distribution of the bonus checks until after District 1199 was decertified, in order to discourage support for the Union.

THE REMEDY

Having found that VOCA Corporation and its wholly owned subsidiaries engaged in the above-described unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom, to take certain affirmative action designed to effectuate the policies of the Act, and to post the notice to employees appended to this decision.[9]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The National Labor Relations Board orders that VOCA Corporation and its wholly owned subsidiaries, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act by issuing a VIP program statement that automatically excludes union-represented employees from participation, by announcing a discriminatory reduction of benefits for union-represented employees, and from impliedly promising and additional benefit to employees if they reject or continue to reject union representation.

(b) Refusing to bargain with any union upon request and refusing to provide any union with information that is relevant to, and necessary for, collective bargaining.

(c) Discriminating against union-represented employees in determining eligibility for VIP bonuses and in distributing VIP bonus checks to eligible employees.

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[9] The General Counsel seeks backpay for all union-represented employees who were discriminatorily denied VIP bonuses in August 1994. Since I have found that only the Eighth Avenue and Virginia Avenue employees were discriminated against in the distribution of the August, 1994, VIP bonuses, and I have further found that VOCA discriminated in favor of these same employees by determining that they were eligible for bonuses, I have not included any backpay provision.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide District 1199 with information concerning the gross amount of dollars involved in the VIP program.

(b) On request, bargain with District 1199 over extension of the VIP program to employees in the West Virginia bargaining units represented by District 1199.

(c) Within 14 days after service by the Region post at its headquarters facility and other facilities, copies of the attached notice marked "Appendix."[11]. Copies of the notice on forms provided by the Regional Director for Region 9, after being signed by VOCA Corporation's authorized representative, shall be posted by VOCA Corporation immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by VOCA Corporation and its subsidiaries to insure that the notices are not altered, defaced, or covered by any other material. In the event that, during these proceedings, VOCA Corporation had gone out of business or closed any of the facilities involved in these proceedings, VOCA Corporation shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees by VOCA Corporation at any time since September 2, 1994.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that VOCA Corporation has taken to comply.

Dated, Washington, D.C. May 22, 1996

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Judith A. Dowd
Administrative Law Judge

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United 'States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted By Order of The
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that VOCA Corporation, and one or more of our wholly-owned subsidiaries, VOCA Corporation of Ohio, Inc., VOCA Corporation of Washington, D.C., and VOCA Corporation of West Virginia, Inc., have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights:

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act by: (a) by issuing a VIP program statement that automatically excludes union-represented employees from participation the program; (b) by announcing a discriminatory reduction of benefits for union-represented employees; (c) by impliedly promising benefits to employees if they reject union representation.

WE WILL NOT refuse to bargain with any union upon request or fail or refuse to provide any union with information that is relevant to and necessary for collective bargaining.

WE WILL NOT discourage union or protected concerted activity by discriminating against union-represented employees in determining eligibility for VIP bonuses and in distributing VIP bonus checks to eligible employees.

WE WILL NOT in any like or related manner interfere with, retrain, or coerce you tin the exercise of the rights guaranteed you by Section 7 of the Act.

VOCA CORPORATION AND ITS WHOLLY-OWNED
SUBSIDIARIES, VOCA CORPORATION OF OHIO, INC.,
VOCA CORPORATION OF WASHINGTON, D.C.
AND VOCA CORPORATION OF WEST VIRGINIA, INC.

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 550 Main Street, Room 3003, Cincinnati, Ohio 45202–3271, Telephone 513–684–3663.